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**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

██████████  
c/o ██████████  
██████████  
██████████

DECISION

MPA/170689

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 10, 2015, under Wis. Stat., §49.45(5), to review a decision by the Division of Health Care Access and Accountability (DHCAA) to modify a Medical Assistance (MA) prior authorization request for personal care worker (PCW) services, a hearing was held on January 27, 2016, by telephone.

The issue for determination is whether the DHCAA correctly reduced the requested number of PCW hours.

**PARTIES IN INTEREST:**

Petitioner:

██████████  
c/o ██████████  
██████████  
██████████

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Written submission of ██████████, Nurse Consultant

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a 27-year-old resident of Rock County who receives MA.
2. On November 5, 2015, ██████████, Inc. requested prior authorization for 35.75 hours per week PCW services to start December 1, 2015, PA no. ██████████. By a letter dated December 1, 2015, the DHCAA modified the request to approve 19.25 weekly hours.
3. Petitioner is developmentally disabled following lead poisoning as a child. She requires partial physical assistance to bath, groom, and dress. She feeds herself but requires constant supervision

and cues to prevent choking. She is incontinent and requires assistance with toileting or clean-up a number of times per day. She attends a day program Monday through Friday every week. She requires assistance with medication.

4. Petitioner resides with her mother, who also is her [REDACTED] caregiver.
5. The DHCAA allowed maximum daily PCW hours for bathing, dressing, and grooming, and medication assistance.
6. The DHCAA allowed no time for eating assistance, reasoning that constant supervision is not a basis for allocating PCW time. Meal preparation and set up is allocated separately under services incidental to the tasks.
7. It allowed 40 minutes per day for toileting, essentially once daily toileting assistance and twice daily incontinence care, based on petitioner attending the day program and the PCW schedule being 3:45 p.m. to 7:45 p.m. daily.

### DISCUSSION

Personal care services are “medically oriented activities related to assisting a recipient with activities of daily living necessary to maintain the recipient in his or her place of residence in the community.” Wis. Admin. Code §DHS 107.112(1)(a). Covered services include the following:

1. Assistance with bathing;
2. Assistance with getting in and out of bed;
3. Teeth, mouth, denture and hair care;
4. Assistance with mobility and ambulation including use of walker, cane or crutches;
5. Changing the recipient's bed and laundering the bed linens and the recipient's personal clothing;
6. Skin care excluding wound care;
7. Care of eyeglasses and hearing aids;
8. Assistance with dressing and undressing;
9. Toileting, including use and care of bedpan, urinal, commode or toilet;
10. Light cleaning in essential areas of the home used during personal care service activities;
11. Meal preparation, food purchasing and meal serving;
12. Simple transfers including bed to chair or wheelchair and reverse; and
13. Accompanying the recipient to obtain medical diagnosis and treatment.

Wis. Admin. Code, §DHS 107.112(b).

Personal care workers can spend no more than one-third of their time performing housekeeping activities. Like all medical assistance services, PCW services must be medically necessary and cost effective. Wis. Admin. Code, §DHS 107.02(3)(e)1 and 3.

The DHCAA now utilizes a Personal Care Screening Tool, a computer program it believes will allow it to consistently determine the number of hours required by each recipient. The screening tool allots a specific amount of time in each area the recipient requires help, which the DHCAA’s reviewer can then adjust to account for variables missing from the screening tool’s calculations.

As noted in the findings, the major reasons for the reduction in the requested PCW hours were the elimination of eating assistance and the reduction in toileting time. Nurse Zander, in her December 22, 2015 case summary, notes that Topic 11497 of the PCW handbook provides (bold and italic type as in the handbook):

"Constant supervision" of a PC service is reserved for members who cannot perform the activity without continuous direction from a PCW *and* if the PCW physically intervenes to ensure the member performs the activity safely. The PCW must be actively involved in **directing** the member during the execution of the activity **and physically participate** in one or more steps of the activity the member is performing. Watching the member executing the task by himself or herself without physical intervention is not "constant supervision."

The DHCAA notes that there is no documentation that petitioner chokes, and that reminding a person to slow down while eating is not considered to be a covered PCW task. Nurse [REDACTED], the personal care assessor, entered level D for eating, which means that individual feeds herself with constant supervision and physical intervention. Nurse [REDACTED] then notes that petitioner must have her meals served to her and needs to be cued to slow down and chew before swallowing. No physical intervention is noted. During the hearing neither Nurse [REDACTED] nor petitioner's mother noted any actual physical intervention with petitioner's eating. Based on the Handbook provision and the notes saying that petitioner requires only supervision and cueing, I have to conclude that the DHCAA correctly zeroed out the eating time. Letter D should not have been selected for eating because petitioner does not require physical intervention.

The toileting time should be increased. While the PCW hours are noted in the tool to be four hours in the evening, in actuality the caregiver provides those cares more often because she lives in the home. I will add an additional two times daily incontinence care on weekdays and four times daily on weekends, meaning an additional 20 minutes per day on weekdays and 40 minutes per day on weekends, or 180 minutes per week. See the Personal Care Activity Time Allocation Table, Attachment 6 to the case summary; it provides that each Letter D toileting activity is allocated ten minutes. Thus ADL and MOT time is 1090 minutes per week, and services incidental are increased to 272.5 hours per week (1090 times 25%). Thus I will approve 1,362.5 minutes, or 22.75 hours per week. While I understand that petitioner's mother believes the time to be insufficient, it nevertheless is the time calculated using the Department's program.

Although I am changing the hours retroactive to the start date of the authorization, the provider still must have provided and documented the additional PCW time that I have granted in order to be reimbursed.

### **CONCLUSIONS OF LAW**

The Department correctly modified petitioner's requested PCW hours by eliminating eating time, but it reduced toileting time by too many minutes.

**THEREFORE, it is**

**ORDERED**

That [REDACTED] Inc. is hereby authorized to provide 22.75 hours per week (91 units) PCW services for petitioner retroactive to the start date of the authorization. The DHCAA shall amend PA no. [REDACTED] to be 91 units per week beginning December 1, 2015. It shall do so within 10 days of this decision. In all other respects the petition for reviewed is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 4th day of February, 2016

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\sBrian C. Schneider  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on February 4, 2016.

Division of Health Care Access and Accountability

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